

Award No. 6105

Docket No. 5947

2-RDG-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jesse Simons when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

I - That the Reading Company unjustly dismissed Car Inspector Harry R. Wiley on May 20, 1969, and has unjustly held him out of service since that date.

II - That Car Inspector Wiley be restored to service and made whole to the following extent.

1. Compensate him for all time lost as of May 20, 1969.
2. Make him whole for all vacation rights.
3. Pay the premiums for Hospital, Surgical and Medical Benefits for all time held out of service.
4. Pay the premiums for Group Life Insurance for all time held out of service.

EMPLOYES' STATEMENT OF FACTS: Car Inspector Harry R. Wiley, hereinafter referred to as the claimant entered the service of the Reading Company, hereinafter referred to as the carrier, as a coach cleaner on June 12, 1950, at Shamokin, Penna.

Claimant was advanced to car repairer helper March 20, 1951 and on May 16, 1952 was advanced to car inspector at Shamokin.

October 6, 1952, claimant transferred to Coatesville, Pennsylvania, where he had been working on the date he was dismissed.

May 20, 1969, Division General Foreman, Cars, L. Amonson, directed a letter to claimant citing him for investigation at 10:30 A. M., Friday, May 23, 1969, on a charge, "* * *" in connection with engaging in activity unrelated to your assignment during your regular tour of duty on May 17, 1969, and

A. No.

Q. Do you consider yourself a desirable employe under these circumstances?

A. No.

Q. There is a tremendous amount of material around the property and the Company can make no distinction as to the value of the property and employes taking only a small amount of the material can also take something of greater value. It is the duty of employes to protect Company property.

A. I cannot afford to lose my job.

Q. Wasn't there any thought given to this at the time?

A. No."

Carrier granted the claimant's request for "another chance" and only imposed a fifteen day suspension. On October 16, 1961 the claimant was dismissed from carrier's service for allegedly lying under a car and threatening his superior. Referee Shake determined that while the claimant may have cursed his superior the evidence was conflicting and "* * * Claimant's explanation for lying down during his tour of duty was that he had just removed a piece of scrap iron from the brake rigging under a car and that he was merely taking a short rest, due to the heat and having a headache; and of course, his statement was not susceptible of disproof." (Second Division Award 4354) Your Board ordered the claimant reinstated without back pay; however, the Referee noted "* * * we cannot say that the claimant should be completely exonerated." Carrier can only conclude that in view of the claimant's present actions and prior misconduct it would have been derelict and unreasonable not to dismiss him.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

From the review of the entire record it is clear that claimant, while on duty, went to a dump located within the grounds of the Lukens Steel Company, which dump was not on, or en route, to a work location, and while there, removed from the dump copper wiring, placing same in the Company's truck, and subsequently transferring it to his own vehicle.

Disciplinary action by the carrier was warranted by virtue of the fact that the claimant was absent from his place of duty, was performing acts not authorized either by Lukens or carrier, which acts also consisted of taking into his possession property of Lukens, presumably for reasons of personal

gain. That the claimant did not benefit from his action, and that the value of what he seized was negligible does not change the fact that he was engaged in pilfering.

Discharge of the claimant, who has 20 years of service, because of the instant of attempted pilfering on May 17, 1969, standing by itself, would not, it is found, have been sustained by the Board.

However, on May 27th, 1960, claimant was observed stealing gasoline from the carrier, and at his hearing, admitted that he had been stealing gasoline for some time. Carrier suspended claimant on the basis of a plea for "another chance."

On October 16, 1961, claimant was dismissed for the reason "Lying under a car and threatening his superior." This dismissal was the subject of grievance, which was ultimately heard by the Board, which directed reinstatement, though without back pay and without exoneration.

Thus in summary, the Board is reviewing a claim for a reinstatement of a discharged employe, with 20 years seniority, who was dismissed for engaging in pilferage, and who, in addition, was previously disciplined for gross acts of misconduct, one of which was also pilfering.

On the whole record, and considering all of the employe's past employment history, the Board finds that the carrier's decision to discharge the claimant was for just cause, and was not arbitrary, capricious or excessive.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 21st day of April 1971.